Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 79-560

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

EUGENE VISLISEL, PETITIONER

v.

UNITED STATES DEPARTMENT OF LABOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR REHEARING

Eugene Vislisel
Petitioner Pro Se
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IN THE

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October Term, 1979

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EUGENE VISLISEL, Petitioner Pro Se

v.

U.S. DEPARTMENT OF LABOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
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PETITION FOR REHEARING

The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on January 7, 1980 and (2) granting the petition. As grounds for this motion, petitioner states the following:

1. THE GRANT OF CERTIORARI IN SACHER v. UNITED STATES, 342 U.S. 858 AND PHILLIPS PETROLEUM CO. v. WISCONSIN, 346 U.S. 934.

The above two cases represent two of the three certioraris granted by the

U.S. Supreme Court in the years 1951-1953. These two cases are not classified except as cases in which the Court changed its mind. The point on which the conflict exist in this case is similarly without classification and is based upon a paramount error in need of correction in the courts below in the interest of justice.

The case was decided in favor of the Government on grounds that I had refused job offers. Currently the Iowa Department of Job Service is investigating this charge by the Government as the respondent company did fail to report these refusals to accept job offers to Job Service of Iowa - as they were required to do. Proving these job offers and refusals would have ended in the termination of my unemployment compensation benefits prior to full term completion. These benefits never were terminated prior to expiration of full term although the opposition claims I had refused job offers during the interim.

There never was any intransigence on the part of myself as stated in the decision by the District Court Judge. Intransigence was not a statement of issue but introduced by the District Court Judge. Recently I have reapplied with the respondent company and was told my application will not be considered despite the fact that the record does show my work as good when previously employed with this company (p. 43 of the

record) and that I was terminated solely because of my handicap (p. 63 of the record). The record does show on p. 74 that the respondent company stated they attempted to employ me since January 5, 1977 but they now refuse to reconsider my application. A Summary Judgment was used to dismiss this case in District Court. Summary Judgments are not intended to be used indiscriminately where cases do have merit. A hearing requested in compliance with local rules was also denied by the District Court Judge. Never was there an administrative hearing by the reviewing agency.

2. THE VIOLATION OF THE PRINCIPLES OF COLE v. ARKANSAS, 333 U.S. 196.

As a matter of due process, I was clearly entitled to have the validity of the District Court decision appraised by the Court of Appeals "on consideration of the case and the records and as the issues were determined". COLE v. ARKANSAS, 333 U.S. 196, 202. But that principle was egregariously violated by the court below; and this error--which is of constitutional proportions--was repeated in the Government's Brief in Opposition before this Court. The affirmance below was premised on the theory that the final determinations of the reviewing agency as presented were factually correct without any regard as to the inaccuracy of representations regarding job offers. The same concept as the "denial of job offers by myself" is repeated by the Government on page 3, 4,

and 5 of the Brief For the Respondents In Opposition as used before this court.

Yet the most careful examination and analysis of the record shows not a scintilla of evidence, of any kind or description that I in fact was offered any jobs at all. But the Court of Appeals completely ignored that fatal flaw in the evidence. Rather the evidence does show (1) the Respondent Companies Doctor recommended no factory jobs for myself because of my handicap[1]-yet page 125 of the record shows the agency findings and also the court findings do clearly show that I refused a factory position and (2) Interviewer Schneider wrote a letter to Personnel recommending against hire of myself for shipping control clerk[2]--yet page 125 of of the record shows the agency determinations and also the court findings do show that I refused a position for shipping control clerk. The law in question here--SECTION 503, REHABILITATION ACT OF 1973, AS AMENDED, and its implementation by Public Law 93-112 and Part 60-741 - AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR HANDICAPPED WORKERS, does in fact require the Federal Contractor to employ a handicapped worker for a job the handicapped worker is qualified to perform. Qualification is defined in 60-741.2 of

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1 Made a part of the record by Special Designation, p. 158 of the records.

2 Page 69 of the record

AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR HANDICAPPED WORKERS as one who "is capable of performing a particular job, with reasonable accommodation to his or her handicap". Merely alleging a job offer without proving job qualification and job offers does not meet the test of the applicable law. Thus the lower court decisions removed the burden on the Government to produce any evidence of the federal contractor actually offering a handicapped worker jobs for which he is qualified to do.

Thereby, I was deprived of my right to have my case reviewed on the basis of the theory of SECTION 503, REHABILITATION ACT OF 1973, AS AMENDED, and charges contrived therein. Contrariwise, I have been denied any right to a court hearing as requested although made with compliance to the rules of the court. This combination of circumstances is so grossly violative of the principles of COLE v. ARKANSAS, supra, as to call for a re-evaluation of the denial of certiorari and to permit my case to be appraised on the basis of the charges actually made.

CONCLUSION

For the reasons as set forth above, as well as those contained in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the

judgment and opinion below.

Respectfully submitted,

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Petitioner, Pro Se

January 25, 1980

CERTIFICATE OF PRO SE PETITIONER

As pro se petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58 (2).

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Petitioner, Pro Se

CERTIFICATE OF DELIVERY

I certify that I delivered copies of the foregoing document to which this certificate is attached to all parties or attorneys of record on the 25th day of January, 1980 as per rule 33. All parties required to be served have been served.

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EUGENE VISLISEL